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SENATE

{ REPORT
116-156

WATER SUPPLY INFRASTRUCTURE REHABILITATION AND UTILIZATION ACT

OCTOBER 29, 2019.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 2044]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2044) to amend the Omnibus Public Land Management Act of 2009 to establish an Aging Infrastructure Account, to amend the Reclamation Safety of Dams Act of 1978 to provide additional funds under that Act, to establish a review of flood control rule curves pilot project within the Bureau of Reclamation, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Water Supply Infrastructure Rehabilitation and Utilization Act".

SEC. 2. AGING INFRASTRUCTURE ACCOUNT.

Section 9603 of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 510b) is amended by adding at the end the following:

(d) AGING INFRASTRUCTURE ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a special account, to be known as the ‘Aging Infrastructure Account’ (referred to in this subsection as the ‘Account’), to provide funds to, and provide for the extended repayment of the funds by, a transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs for the conduct of extraordinary operation and maintenance work at a project facility, which shall consist of—

“(A) any amounts that are specifically appropriated to the Account under section 9605; and

“(B) any amounts deposited in the Account under paragraph (3)(B).

“(2) EXPENDITURES.—Subject to appropriations and paragraph (3), the Secretary may expend amounts in the Account to fund and provide for extended repayment of the funds for eligible projects identified in a report submitted under paragraph (5)(A).

“(3) REPAYMENT CONTRACT.—

“(A) IN GENERAL.—The Secretary may not expend amounts under paragraph (2) with respect to an eligible project described in that paragraph unless the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs has entered into a contract to repay the amounts under subsection (b)(2).

“(B) DEPOSIT OF REPAYED FUNDS.—Amounts repaid by a transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs receiving funds under a repayment contract entered into under this subsection shall be deposited in the Account and shall be available to the Secretary for expenditure in accordance with this subsection without further appropriation.

“(4) APPLICATION FOR FUNDING.—

“(A) IN GENERAL.—Not less than once per fiscal year, the Secretary shall accept, during an application period established by the Secretary, applications from transferred works operating entities or project beneficiaries responsible for payment of reimbursable costs for funds and extended repayment for eligible projects.

“(B) ELIGIBLE PROJECT.—A project eligible for funding and extended repayment under this subsection is a project that—

“(i) qualifies as an extraordinary operation and maintenance work under this section;

“(ii) is for the major, non-recurring maintenance of a mission-critical asset; and

“(iii) is not eligible to be carried out or funded under the repayment provisions of section 4(c) of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508(c)).

“(C) GUIDELINES FOR APPLICATIONS.—Not later than 60 days after the date of enactment of this subsection, the Secretary shall issue guidelines describing the information required to be provided in an application for funds and extended repayment under this subsection that require, at a minimum—

“(i) a description of the project for which the funds are requested;

“(ii) the amount of funds requested;

“(iii) the repayment period requested by the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs;

“(iv) alternative non-Federal funding options that have been evaluated;

“(v) the financial justification for requesting an extended repayment period; and

“(vi) the financial records of the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs.

“(D) REVIEW BY THE SECRETARY.—The Secretary shall review each application submitted under subparagraph (A)—

“(i) to determine whether the project is eligible for funds and an extended repayment period under this subsection;

“(ii) to determine if the project has been identified by the Bureau of Reclamation as part of the major rehabilitation and replacement of a project facility; and

“(iii) to conduct a financial analysis of—

“(I) the project; and

“(II) the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs.

“(5) REPORT.—Not later than 90 days after the date on which an application period closes under paragraph (4)(A), the Secretary shall submit to the Committees on Energy and Natural Resources and Appropriations of the Senate and the Committees on Natural Resources and Appropriations of the House of Representatives a report that—

“(A) identifies each project eligible for funds and extended repayment under this subsection;

"(B) with respect to each eligible project identified under subparagraph (A), includes—
 "(i) a description of—
 "(I) the eligible project;
 "(II) the anticipated cost and duration of the eligible project; and
 "(III) any remaining engineering or environmental compliance that is required before the eligible project commences;
 "(ii) an analysis of—
 "(I) the repayment period proposed in the application; and
 "(II) if the Secretary recommends a minimum necessary repayment period that is different than the repayment period proposed in the application, the minimum necessary repayment period recommended by the Secretary; and
 "(iii) an analysis of alternative non-Federal funding options; and
 "(C) describes the balance of funds in the Account as of the date of the report.

(6) EFFECT OF SUBSECTION.—Nothing in this subsection affects—
 "(A) any funding provided, or contracts entered into, under subsection (a) before the date of enactment of this subsection; or
 "(B) the use of funds otherwise made available to the Secretary to carry out subsection (a).".

SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE RECLAMATION SAFETY OF DAMS ACT OF 1978.

Section 5 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 509) is amended, in the first sentence, by inserting “, and, effective October 1, 2019, not to exceed an additional \$550,000,000 (October 1, 2019, price levels)” before “, plus or minus”.

SEC. 4. REVIEW OF FLOOD CONTROL RULE CURVES PILOT PROJECT.

- (a) DEFINITIONS.—In this section:
 - (1) BUREAU.—The term “Bureau” means the Bureau of Reclamation.
 - (2) ELIGIBLE WORKS.—
 - (A) IN GENERAL.—The term “eligible works” means a reserved works, or a transferred works for which—
 - (i) the flood control rule curve has not been substantially adjusted during the 10-year period ending on the date of enactment of this Act; and
 - (ii) the Secretary receives a request in accordance with subsection (c)(1)(A).
 - (B) EXCLUSIONS.—The term “eligible works” does not include—
 - (i) any project authorized by the Boulder Canyon Project Act (43 U.S.C. 617 et seq.);
 - (ii) any project authorized by the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.); or
 - (iii) any project of the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 891, chapter 665)).
 - (3) PILOT PROJECT.—The term “pilot project” means the pilot project established under subsection (b).
 - (4) RESPONSIBLE PARTY.—The term “responsible party” means—
 - (A) with respect to a reserved works—
 - (i) a non-Federal water user or power contractor that has an active repayment, water service, or power service contract with the Bureau;
 - (ii) a power contractor that has an active contract with a Federal power marketing administration for energy, capacity, or energy and capacity, from a hydropower facility owned by the Bureau; or
 - (iii) a non-Federal operating entity, including a joint powers authority or board of control, that has assumed responsibility on behalf of multiple water users, through a contract with the Bureau, for the operation and maintenance of the reserved works; and
 - (B) with respect to a transferred works, the operating entity of the transferred works.
 - (5) SECRETARY.—The term “Secretary” means Secretary of the Interior.

(b) ESTABLISHMENT OF PILOT PROJECT.—The Secretary, in consultation with the Secretary of the Army, shall establish within the Bureau a pilot project to adjust flood control rule curves in accordance with subsection (d).

(c) SELECTION OF ELIGIBLE WORKS.—
 (1) REQUEST.—

- (A) IN GENERAL.—In order for an eligible works to be selected for inclusion in the pilot project, a responsible party shall submit a written request to the Secretary seeking a flood control rule curve adjustment.
- (B) NOTICE.—Not later than 30 days after the date on which the Secretary receives a request under subparagraph (A), the Secretary shall notify—
- (i) each responsible party of that request, using lists maintained by the Bureau; and
 - (ii) if applicable, the appropriate Federal power marketing administration.
- (2) SELECTION.—Each year, the Secretary shall—
- (A) select 1 or more eligible works for inclusion in the pilot project; and
 - (B) submit a list of those eligible works to—
- (i) the Secretary of the Army;
 - (ii) the Committee on Natural Resources of the House of Representatives; and
 - (iii) the Committee on Energy and Natural Resources of the Senate.
- (3) EXCLUSION.—The Secretary shall not select an eligible works for inclusion in the pilot project under paragraph (2)(A) if, not later than 60 days after the date on which the notice is provided to each responsible party under paragraph (1)(B)(i), a majority of the responsible parties submit to the Secretary an objection to the inclusion of the eligible works in the pilot project.
- (d) ADJUSTMENT OF A FLOOD CONTROL RULE.—
- (1) IN GENERAL.—The flood control rule curve of an eligible works shall be adjusted pursuant to section 7 of the Act of December 22, 1944 (33 U.S.C. 709), if the Secretary of the Army determines that the adjustment would enhance the authorized purposes of the eligible works.
 - (2) CONSIDERATIONS.—In the adjustment of a flood control rule curve under paragraph (1), the following factors shall be considered:
- (A) Forecast-informed reservoir operations.
 - (B) Improved hydrologic forecasting for—
- (i) precipitation;
 - (ii) snowpack;
 - (iii) runoff; and
 - (iv) soil moisture conditions.
- (C) Any new watershed data, including data provided by a responsible party for the eligible works.
- (3) CONSULTATION.—In the adjustment of a flood control rule curve under paragraph (1), the following entities shall be consulted:
- (A) Each responsible party for the eligible works.
 - (B) In the case of an eligible works that produces power marketed by the Federal Government, the Federal power marketing administration that markets the power.
 - (C) The Secretary.
- (e) CONSULTATION.—The Secretary shall consult with the Secretary of the Army with respect to any action taken by the Secretary of the Army—
- (1) pursuant to section 7 of the Act of December 22, 1944 (33 U.S.C. 709); and
 - (2) that relates to the pilot project.
- (f) FUNDING.—The Secretary or the Secretary of the Army, as appropriate, may accept amounts from responsible parties for eligible works to fund all or a portion of the cost of carrying out an adjustment of a flood control rule under subsection (d), including a review or revision of operational documents (including water control plans, water control manuals, water control diagrams, release schedules, rule curves, operational agreements with non-Federal entities, and any associated environmental documentation).
- (g) EFFECT.—Nothing in this section—
- (1) affects or modifies any existing authority to review or modify—
- (A) reservoir operations, including any existing forecast-informed reservoir operations at a facility of the Corps of Engineers, such as Coyote Dam; and
 - (B) flood control operations; or
- (2) affects or modifies any authorized purpose of any project carried out by the Secretary.
- (h) TERMINATION.—
- (1) IN GENERAL.—The pilot project shall terminate on the date that is 15 years after the date of enactment of this Act.
 - (2) EFFECT.—Termination of the pilot project under paragraph (1) shall not affect any flood control rule curve developed as part of the pilot project.

PURPOSE

The purpose of S. 2044 is to amend the Omnibus Public Land Management Act of 2009 to establish an Aging Infrastructure Account, to amend the Reclamation Safety of Dams Act of 1978 to provide additional funds under that Act, and to establish a review of flood control rule curves pilot project within the Bureau of Reclamation (BOR).

BACKGROUND AND NEED

The BOR owns 480 dams and dikes, nearly 40,000 miles of water conveyance facilities, and 58 power plants, along with various buildings, lands, and other facilities. The majority of this infrastructure is over 50 years old, and a growing number have been in operation for over a century. Roughly two-thirds of these assets—referred to as “transferred works”—are maintained and operated by non-federal entities, such as water or irrigation districts, through contracts with the BOR while title of the property remains with the federal government. So called “reserved works”—those projects that are owned, operated, and maintained by the BOR—make up the remaining one-third of the assets and are often the larger, multipurpose facilities.

Traditionally, the BOR has funded 100 percent of the upfront capital for projects through appropriated dollars, and water and power beneficiaries would repay the federal capital investment and annual operations and maintenance (O&M) costs. The specific terms of O&M payments for individual projects often vary depending on a variety of factors, but typically these costs are required to be paid in the year that they are incurred.

As BOR facilities age, O&M costs at many projects are significantly increasing and becoming more capital intensive in nature. For major rehabilitation, repair, or replacement projects, it can be difficult for some BOR contractors to cover the total cost in a single year. In some cases, water districts seek debt financing to allow payment of capital O&M over time, but private capital is often difficult or expensive to access because the underlying asset is owned by the federal government.

In response to these challenges, Congress provides the BOR with authority to fund “extraordinary maintenance” projects and have the cost repaid over up to 50 years in the Omnibus Public Land Management Act of 2009 (Public Law 111–11). However, the often lengthy and opaque process for getting a project designated as extraordinary maintenance and limited opportunities for Congress to direct appropriated dollars specifically for this purpose within the BOR budget has made the program less useful as a tool to address aging infrastructure.

The BOR Safety of Dams program was authorized in 1978 in the Reclamation Safety of Dams Act (Public Law 95–578) and is another important tool for protecting the structural integrity of facilities based on up-to-date standards and data. There is currently roughly \$1.4 billion in authorized funding levels remaining in the program. Due to large variability in potential expenditures, the BOR indicates that this cap could be reached anywhere between 2022 and 2030 based on the current inventory. Additionally, BOR’s safety evaluation of existing dams (SEED) program conducts ongo-

ing inspections and analysis and significant fluctuations to the anticipated inventory can occur.

In addition to rehabilitation of aging infrastructure, there are efforts to more fully use existing surface storage facilities by using improved atmospheric and watershed data to manage flood control risk more precisely. By temporarily storing water that would have been released downstream under the guise of flood protection based on older data, water managers are able to move and store water across a system to increase the amount of water that is left in storage to be carried over for delivery during drought and low-water years. In most cases, changing reservoir operations in this way requires changes to Army Corps of Engineers Water Control Manuals.

LEGISLATIVE HISTORY

S. 2044 was introduced by Senators McSally and Sinema on June 27, 2019. The Subcommittee on Water and Power held a hearing on the measure on July 18, 2019.

The Senate Committee on Energy and Natural Resources met in open business session on September 25, 2019, and ordered S. 2044 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on September 25, 2019, by a majority voice vote of a quorum present, recommends that the Senate pass S. 2044, if amended as described herein. Senator Lee asked to be recorded as voting no.

COMMITTEE AMENDMENT

During its consideration of S. 2044, the Committee adopted an amendment in the nature of a substitute and an amendment to the substitute. The substitute, as amended, replaces the term “transferred works” with “a project facility” and makes other conforming changes in section 2 to allow both transferred and reserved works owned by BOR to qualify for funding from the Aging Infrastructure Account. In addition, the substitute adds in section 2 a requirement that information on alternative non-Federal funding options that have been evaluated be included in an application, strikes the requirement that BOR include an analysis of the effect on the affordability in the required report, and adds a provision clarifying that the section does not affect funds or contracts entered into pursuant to section 9603 of the Omnibus Public Land Management Act of 2009 prior to enactment of this subsection or the use of funds otherwise available to the secretary to carry out that section.

The substitute adds a definition of “responsible party” in section 4.

The amendment also makes technical and clarifying changes to language throughout the bill.

SECTION-BY-SECTION ANALYSIS

Section. 1. Short title

Section 1 sets forth the short title.

Sec. 2. Aging infrastructure account

Section 2 amends section 9603 of the Omnibus Public Lands Management Act of 2009 to add a new subsection (d). The new subsection (d)(1) establishes an aging infrastructure account to provide funds to transferred works operating entities or project beneficiaries responsible for repayment of reimbursable costs for the conduct of extraordinary operation and maintenance work at BOR facilities. The new subsection (d)(2) authorizes the Secretary of the Interior to provide for the extended repayment of the funds by eligible projects. The new subsection (d)(3) requires a repayment contract to be in place before funds can be expended, and authorizes funds repaid under such contract to be deposited in the Aging Infrastructure Account without further appropriation. The new subsection (d)(4) requires the Secretary to accept applications for funding and extended repayment for eligible projects, outlines project eligibility, and requires guidelines for the application to be developed. The new subsection (d)(5) requires the Secretary to analyze the applications and submit a report to Congress.

Sec. 3. Authorization of appropriations for the Reclamation Safety of Dams Act of 1978

Section 3 amends the Safety of Dams Act of 1978 to add an additional \$550 million to the authorization ceiling.

Sec. 4. Review of flood control rule curves pilot project

Subsection (a) defines terms specific to this section.

Subsection (b) directs the Secretary of the Interior, in consultation with the Secretary of the Army, to establish a pilot program within the BOR to adjust flood control rule curves for eligible BOR projects. Flood control rule curves are set by the Army Corps of Engineers and are used to determine how much of a project storage space should remain available for flood control purposes, along with the rate of release from reservoirs and other operational parameters.

Subsection (c) sets a process and criteria for the selection of eligible works by the Secretary and submission of the selected works to the Secretary of the Army.

Subsection (d) requires the Secretary of the Army to adjust flood control rule curves of an eligible work if the Secretary of the Army determines that the adjustment would enhance the authorized purposes of the work, and outlines specific considerations that should be taken into account.

Subsection (e) requires the Secretary of the Interior and Secretary of the Army to consult on actions taken by the pilot program.

Subsection (f) authorizes the Secretary of the Army or Interior, as appropriate, to accept funds from a responsible party to adjustment a flood control rule curve.

Subsection (g) states that nothing in this section affects existing authority to review or modify reservoir operations at an Army Corps of Engineers facility or flood control operations. It also states that nothing affects or modifies any authorized purpose of any project carried out by the Secretary of the Interior.

Subsection (h) terminates the pilot program after 15 years and states that flood control rule curves modified under the pilot program are not affected by its termination.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the internet at www.cbo.gov.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2044. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2044, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 2044, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the July 18, 2019, hearing on S. 2044 follows:

STATEMENT OF BRENDA BURMAN, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

Chairman McSally, Ranking Member Cortez Masto, and members of the Subcommittee, I am Brenda Burman, Commissioner for the Bureau of Reclamation within the Department of the Interior (Interior). Thank you for the opportunity to provide Interior's views on S. 1932, the Drought Resiliency and Water Supply Infrastructure Act, S. 2044, the Water Supply Infrastructure Rehabilitation and Utilization Act, and S. 1570, the Aquifer Recharge Flexibility Act.

Reclamation's dams and reservoirs, water conveyance systems, and power generating facilities are integral components of the Nation's infrastructure. This infrastructure is key to Reclamation's continued success. Approximately 50 percent of Reclamation's dams were built between 1900 and 1950, and approximately 90 percent of the dams were built before adoption of currently used, state-of-the-art design and construction practices. Effectively managing the modernization of this infrastructure and the benefits that these structures provide is among the significant chal-

lenges facing Reclamation in the next several years. The reliability, safety, efficiency, and cost effectiveness of Reclamation's infrastructure to ensure water deliveries and power generation is a high priority. Our FY 2020 budget proposed increases in funding for extraordinary maintenance, including dam safety, to modernize infrastructure. We appreciate that the bill sponsors are working to improve western water reliability.

S. 2044—Water Supply Infrastructure Rehabilitation and Utilization Act

The Department supports the intent of S. 2044 to address Reclamation's aging infrastructure. We applaud this bipartisan effort to assist the Bureau in making major updates and replacements. We have stated on the record that it is our priority to make investments in modernizing our infrastructure, and this bill would advance our mutual goal. We would appreciate the opportunity to continue working with the Committee on improvements to the bill that we believe would clarify and improve implementation.

AGING INFRASTRUCTURE ACCOUNT

Section 2 of S.2044 amends Section 9603 of Public Law 111–11 (43 U.S.C. 510b) to create a new extraordinary maintenance (XM) account (account) to fund eligible XM projects at transferred works. The account would be funded with appropriations under Section 9605 of P.L. 111–11 and through project beneficiaries' repayment of Federal expenditures from it. It would fund non-emergency XM only, leaving emergency XM projects to be funded as they are currently funded under P.L. 111–11, through continuing Section 9605 appropriations outside the account. The bill sets forth various conditions and processes for using the account, including an annual application process and annual reports to specified Congressional Committees on the eligible projects, some key details of their evaluations, and the Secretary's recommendations regarding repayment periods. Based on our analysis of Section of S. 2044, expenditures out the newly created account would still be subject to appropriations, and project beneficiaries' repayments of XM would incur interest, consistent with existing Reclamation law and policy.

APPROPRIATIONS FOR THE RECLAMATION SAFETY OF DAMS ACT

This section would provide an increase to the appropriations ceiling for the Reclamation Safety of Dams Program. Raising the dam safety authorization ceiling would assure that Reclamation can continue to meet crucial dam safety needs across the West. Dam safety projects are vital to sustaining the benefits Reclamation projects provide and enable Reclamation to incorporate new information as relevant knowledge and technology change.

FLOOD CONTROL RULE CURVES PILOT

Section 4 of the Water Supply Infrastructure Rehabilitation and Utilization Act would authorize Interior to establish a pilot project within the Bureau of Reclamation to review flood control rule curves. In general, Reclamation could implement the pilot project as proposed in the legislation. However, clarifying the role of the Secretary of the Army and the Army Corps of Engineers (USACE) in approving changes to flood control rule curves may help ensure effective implementation.

The considerations described in section 4 for assessing potential changes to flood rule curves are consistent with approaches currently being implemented by Reclamation. For example, Reclamation recently completed five reservoir operations pilot studies using improved forecasting and hydrologic information to assess opportunities to better meet water demands. Reclamation also is implementing the October 2018 “Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West”, specifically Section 3: Improve Forecasts of Water Availability, and is engaged with Federal and non-Federal partners on several forecasting applications in California.

CONCLUSION

Thank you for the opportunity to provide the Department’s views on these pieces of legislation. We look forward to continuing our work with the sponsors and the Committee on these bills.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by S. 2044, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE OMNIBUS PUBLIC LAND MANAGEMENT ACT of 2009

PUBLIC LAW 111–11

To designate certain land as components of the National Wilderness Preservation System, to authorize certain programs and activities in the Department of the Interior and the Department of Agriculture, and for other purposes.

* * * * *

TITLE IX—BUREAU OF RECLAMATION AUTHORIZATIONS

* * * * *

Subtitle G—Aging Infrastructure

* * * * *

SEC. 9603. EXTRAORDINARY OPERATION AND MAINTENANCE WORK PERFORMED BY THE SECRETARY.

(a) IN GENERAL.—The Secretary or the transferred works operating entity may carry out, in accordance with subsection (b) and consistent with existing transfer contracts, any extraordinary operation and maintenance work on a project facility that the Secretary determines to be reasonably required to preserve the structural safety of the project facility.

(b) REIMBURSEMENT OF COSTS ARISING FROM EXTRAORDINARY OPERATION AND MAINTENANCE WORK.—

(1) TREATMENT OF COSTS.—For reserved works, costs incurred by the Secretary in conducting extraordinary operation and maintenance work will be allocated to the authorized reimbursable purposes of the project and shall be repaid within 50 years, with interest, from the year in which work undertaken pursuant to this subtitle is substantially complete.

(2) AUTHORITY OF SECRETARY.—For transferred works, the Secretary is authorized to advance the costs incurred by the transferred works operating entity in conducting extraordinary operation and maintenance work and negotiate appropriate 50-year repayment contracts with project beneficiaries providing for the return of reimbursable costs, with interest, under this subsection: Provided, however, That no contract entered into pursuant to this subtitle shall be deemed to be a new or amended contract for the purposes of section 203(a) of the Reclamation Reform Act of 1982 (43 U.S.C. 390cc(a)).

(3) DETERMINATION OF INTEREST RATE.—The interest rate used for computing interest on work in progress and interest on the unpaid balance of the reimbursable costs of extraordinary operation and maintenance work authorized by this subtitle shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which extraordinary operation and maintenance work is commenced, on the basis of average market yields on outstanding marketable obligations of the United States with the remaining periods of maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest 1/8 of 1 percent on the unamortized balance of any portion of the loan.

(c) EMERGENCY EXTRAORDINARY OPERATION AND MAINTENANCE WORK.—

(1) IN GENERAL.—The Secretary or the transferred works operating entity shall carry out any emergency extraordinary operation and maintenance work on a project facility that the Secretary determines to be necessary to minimize the risk of imminent harm to public health or safety, or property.

(2) REIMBURSEMENT.—The Secretary may advance funds for emergency extraordinary operation and maintenance work and shall seek reimbursement from the transferred works operating entity or benefitting entity upon receiving a written assurance from the governing body of such entity that it will negotiate a contract pursuant to section 9603 for repayment of costs incurred by the Secretary in undertaking such work.

(3) FUNDING.—If the Secretary determines that a project facility inspected and maintained pursuant to the guidelines and criteria set forth in section 9602(a) requires extraordinary operation and maintenance pursuant to paragraph (1), the Secretary may provide Federal funds on a nonreimbursable basis sufficient to cover 35 percent of the cost of the extraordinary operation and maintenance allocable to the transferred works operating entity, which is needed to minimize the risk of imminent harm. The remaining share of the Federal funds advanced by the Secretary for such work shall be repaid under subsection (b).

(d) AGING INFRASTRUCTURE ACCOUNT.—

(1) ESTABLISHMENT.—*There is established in the general fund of the Treasury a special account, to be known as the ‘Aging Infrastructure Account’ (referred to in this subsection as the ‘Account’), to provide funds to, and provide for the extended repayment of the funds by, a transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs for the conduct of extraordinary operation and maintenance work at a project facility, which shall consist of—*

- (A) any amounts that are specifically appropriated to the Account under section 9605; and*
- (B) any amounts deposited in the Account under paragraph (3)(B).*

(2) EXPENDITURES.—*Subject to appropriations and paragraph (3), the Secretary may expend amounts in the Account to fund and provide for extended repayment of the funds for eligible projects identified in a report submitted under paragraph (5)(A).*

(3) REPAYMENT CONTRACT.—

(A) IN GENERAL.—*The Secretary may not expend amounts under paragraph (2) with respect to an eligible project described in that paragraph unless the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs has entered into a contract to repay the amounts under subsection (b)(2).*

(B) DEPOSIT OF REPAYED FUNDS.—*Amounts repaid by a transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs receiving funds under a repayment contract entered into under this subsection shall be deposited in the Account and shall be available to the Secretary for expenditure in accordance with this subsection without further appropriation.*

(4) APPLICATION FOR FUNDING.—

(A) IN GENERAL.—*Not less than once per fiscal year, the Secretary shall accept, during an application period established by the Secretary, applications from transferred works operating entities or project beneficiaries responsible for payment of reimbursable costs for funds and extended repayment for eligible projects.*

(B) ELIGIBLE PROJECT.—*A project eligible for funding and extended repayment under this subsection is a project that—*

- (i) qualifies as an extraordinary operation and maintenance work under this section;*

(ii) is for the major, non-recurring maintenance of a mission-critical asset; and

(iii) is not eligible to be carried out or funded under the repayment provisions of section 4(c) of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508(c)).

(C) *GUIDELINES FOR APPLICATIONS.*—Not later than 60 days after the date of enactment of this subsection, the Secretary shall issue guidelines describing the information required to be provided in an application for funds and extended repayment under this subsection that require, at a minimum—

(i) a description of the project for which the funds are requested;

(ii) the amount of funds requested;

(iii) the repayment period requested by the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs;

(iv) alternative non-Federal funding options that have been evaluated;

(v) the financial justification for requesting an extended repayment period; and (vi) the financial records of the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs.

(D) *REVIEW BY THE SECRETARY.*—The Secretary shall review each application submitted under subparagraph (A)—

(i) to determine whether the project is eligible for funds and an extended repayment period under this subsection;

(ii) to determine if the project has been identified by the Bureau of Reclamation as part of the major rehabilitation and replacement of a project facility; and

(iii) to conduct a financial analysis of—

(I) the project; and

(II) the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs.

(5) *REPORT.*—Not later than 90 days after the date on which an application period closes under paragraph (4)(A), the Secretary shall submit to the Committees on Energy and Natural Resources and Appropriations of the Senate and the Committees on Natural Resources and Appropriations of the House of Representatives a report that—

(A) identifies each project eligible for funds and extended repayment under this subsection;

(B) with respect to each eligible project identified under subparagraph (A), includes—

(i) a description of—

(I) the eligible project;

(II) the anticipated cost and duration of the eligible project; and

(III) any remaining engineering or environmental compliance that is required before the eligible project commences;

(ii) an analysis of—

(I) the repayment period proposed in the application; and

(II) if the Secretary recommends a minimum necessary repayment period that is different than the repayment period proposed in the application, the minimum necessary repayment period recommended by the Secretary; and

(iii) an analysis of alternative non-Federal funding options; and

(C) describes the balance of funds in the Account as of the date of the report.

(6) EFFECT OF SUBSECTION.—*Nothing in this subsection affects—*

(A) any funding provided, or contracts entered into, under subsection (a) before the date of enactment of this subsection; or

(B) the use of funds otherwise made available to the Secretary to carry out subsection (a).

* * * * *

THE RECLAMATION SAFETY OF DAMS ACT OF 1978, AS AMENDED

PUBLIC LAW 95-518, AS AMENDED

To authorize the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes.

* * * * *

SEC. 5. There are hereby authorized to be appropriated for fiscal year 1979 and ensuing fiscal years such sums as may be necessary and, effective October 1, 1983, not to exceed an additional \$650,000,000 (October 1, 1983, price levels), and, effective October 1, 2000, not to exceed an additional \$95,000,000 (October 1, 2000, price levels), and, effective October 1, 2001, not to exceed an additional \$32,000,000 (October 1, 2001, price levels), and, effective October 1, 2003, not to exceed an additional \$540,000,000 (October 1, 2003, price levels), and effective October 1, 2015, not to exceed an additional \$1,100,000,000 (October 1, 2003, price levels), and, effective October 1, 2019, not to exceed an additional \$550,000,000 (October 1, 2019, price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein, to carry out the provisions of this subchapter to remain available until expended if so provided by the appropriations Act: Provided, That no funds exceeding \$20,000,000 (October 1, 2003, price levels), as adjusted to reflect any ordinary fluctuations in construction costs indicated by applicable engineering cost indexes, shall be obligated for carrying out actual construction to modify an existing dam under authority of this subchapter prior to 30 calendar days from the date that the Secretary has transmitted a report on such existing dam to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

The report required to be submitted by this section will consist of a finding by the Secretary of the Interior to the effect that modifications are required to be made to insure the safety of an existing dam. Such finding shall be accompanied by a technical report containing information on the need for structural modification, the corrective action deemed to be required, alternative solutions to structural modification that were considered, the estimated cost of needed modifications, and environmental impacts if any resulting from the implementation of the recommended plan of modification. For modification expenditures between \$1,800,000 and \$20,000,000 (October 1, 2015, price levels), the Secretary of the Interior shall, at least 30 days before the date on which the funds are expended, submit written notice of the expenditures to the Committee on Natural Resources of the House of Representatives and Committee on Energy and Natural Resources of the Senate that provides a summary of the project, the cost of the project, and any alternatives that were considered.

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